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Mahmood Kooria

Two ›Cultural Translators‹ of Islamic Law and German East Africa

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Rg 24 2016 9 – 17

Inhalt

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Gerhard Dilcher 20 The Germanists and the Historical School of Law: German Legal Science between Romanticism, Realism, and Rationalization

Jakob Zollmann 74 *Austrägalgerichtsbarkeit* – Interstate Dispute Settlement in a Confederate Arrangement, 1815 to 1866

Pedro Cardim 101 Political Status and Identity: Debating the Status of American Territories across the Sixteenth and Seventeenth Century Iberian World

Fokus focus

Translators: Mediators of Legal Transfers

Lena Foljanty 120 Translators: Mediators of Legal Transfers

José Luis Egío 122 From Castilian to Nahuatl, or from Nahuatl to Castilian? Reflections and Doubts about Legal Translation in the Writings of Judge Alonso de Zorita (1512–1585?)

Osvaldo Rodolfo Moutin 154 More than Copy and Paste. The Drafting of the Judicial Order in the Decrees of the Third Mexican Council

Laura Beck Varela 171 Translating Law for Women? The *Institutes du droit civil pour les dames* in Eighteenth-Century Helmstedt

Mahmood Kooria 190 Two ›Cultural Translators‹ of Islamic Law and German East Africa

Karla Escobar 203 What is the »Cultural Baggage« of Legal Transfers? Methodological Reflections on the Case of La Quintiada, Tierradentro-Cauca, 1914–1917

Fokus focus

Legal History in Action: Laying Down Indigenous Customs in Writing

Tzung-Mou Wu	219	Legal History in Action: Laying Down Indigenous Customs in Writing. An Introduction
Tzung-Mou Wu	222	Western Legal Traditions for »Laying Down Taiwan's Indigenous Customs in Writing«
Emanuele Conte	234	Consuetudine, Coutume, Gewohnheit and Ius Commune. An Introduction
Soazick Kerneis	244	*Consuetudo Legis*: Writing Down Customs in the Roman Empire (2nd–5th Century CE)
Bernd Kannowski	251	On Legal Pluralism and Ghosts in the *Sachsenspiegel* and in *Gaya*
Claudia Storti	257	Ascertainment of Customs and Personal Laws in Medieval Italy from the Lombard Kingdom to the Communes
Charles de Miramon	266	Customary Law, Legal Consciousness and Local Agency. From Sumatra to Beauvais circa 1100 and back
Beatrice Pasciuta	276	From Ethnic Law to Town Law: The Customs of the Kingdom of Sicily from the Twelfth to the Fifteenth Century
Bram Van Hofstraeten	288	Recording Customs in Early Modern Antwerp, a Commercial Metropolis
Rodrigo Míguez Núñez	302	Indigenous Customary Law in a Civil Law Context: Latin America and the Chilean Case
Barbara Truffin	314	Codification and Its Discontents: the Emergence of »Customary Rights« of Amazonian Kichwa in Ecuador

Forum forum

Digital Humanities

Christiane Birr	330	Die geisteswissenschaftliche Perspektive: Welche Forschungsergebnisse lassen Digital Humanities erwarten?
Manfred Thaller	335	Was sind (keine) methodischen Implikationen der Digital Humanities?
Silke Schwandt	337	Digitale Objektivität in der Geschichtswissenschaft? Oder: Kann man finden, was man nicht sucht? Ein Erfahrungsbericht
Eric C. Nystrom, David S. Tanenhaus	339	Two Humanists Exploring Together: or, a View from the Weeds
Kellen Funk, Lincoln A. Mullen	341	A Servile Copy: Text Reuse and Medium Data in American Civil Procedure
Jörg Wettlaufer	344	Digitale Transformation der Geschichtswissenschaft: Welcher Erkenntnisfortschritt? Wann?
Bryan Jurish	347	Tools, Toys, and Filters. A Tinker's Apology
Thorsten Schlauwitz	349	Chancen und Grenzen der automatischen Schriftanalyse und -erkennung
Noah Bubenhofer	351	Drei Thesen zu Visualisierungspraktiken in den Digital Humanities
Tatiana Sukhondyaeva	356	Digital Possibilities and Availability of Original Sources on Military Legislation of the 16th–19th Centuries
Andreas Deutsch	358	Auf Wortschatzsuche. Das Deutsche Rechtswörterbuch in einer digitalen Welt
Ute Dercks	361	Kapitellskulptur des 12./13. Jahrhunderts in multimedialer Vision

State and Perspectives of the History of Social Law

Peter Collin	365	State and Perspectives of the History of Social Law – A Few Preliminary Remarks
Marcus Gräser	366	»Tocqueville's Nightmare«? Zum Stand der Diskussion über die Genese der Wohlfahrtsstaatlichkeit in den USA
Deguchi Yuichi	373	From Social Law to Labor Law: The Change in Japanese Legal Theory in Connection with Social Law (*Shakai-ho*)
Monica Stronati	380	The History of Social Law in Italy: Some Considerations
Bruno Debaenst	387	State and Perspectives of the History of Social Law – Belgium
Peter Collin	393	State and Perspectives of the History of Social Law in Germany
Gerhard Melinz	402	Sozialrechtsgeschichte in Österreich: Status quo und quo vadis?
Maciej Jan Mazurkiewicz	412	On the Issues of Social Law in Poland: A State of Research on the History of Social Insurance Law
Marianna Muravyeva	420	History of Social Law in Russia

Kritik critique

Marietta Auer	430	Hundert Klassiker der Weltliteratur
		Christoph Möllers, Die Möglichkeit der Normen
Matthias Schwaibold	433	GoA – Geschichte ohne Ansicht
		Gunter Deppenkemper, *Negotiorum gestio* – Geschäftsführung ohne Auftrag
Matthias Schwaibold	436	Der Richter und sein Rechner
		Wolfgang Ernst, Rechtserkenntnis durch Richtermehrheiten
Matthias Schwaibold	439	Römische Schichtarbeit
		Ulrike Babusiaux, Wege zur Rechtsgeschichte: Römisches Erbrecht
Heinz Holzhauer	441	Nachhallendes Wortgefecht
		Christophe Camby, Wergeld ou uueregildus
Klaus Frédéric Johannes	445	Marmor-Steinbruch
		Martin Bertram, Kanonisten und ihre Texte
Paolo Astorri	446	La Riforma della conoscenza
		Mathias Schmoeckel, Das Recht der Reformation
Michael Stolleis	449	Ein *zu* weites Feld
		Luise Schorn-Schütte, Gottes Wort und Menschenherrschaft
Karl Härter	452	Religiöse Devianz zwischen Kriminalitätsgeschichte, sozialer Praxis und konfessionellen Diskursen
		Eric Piltz, Gerd Schwerhoff (Hg.), Gottlosigkeit und Eigensinn
Christoph H. F. Meyer	454	Naturrecht als Praxis
		R. H. Helmholz, Natural Law in Court

Kritik critique

José Luis Egío 456 Traductores e intérpretes en la Hispanoamérica colonial y sus crónicas

Julio Valdeón, Translation and the Spanish Empire in the Americas

Renzo Honores 459 Los intelectuales indígenas del periodo colonial

Gabriela Ramos, Yanna Yannakakis (eds.), Indigenous Intellectuals: Knowledge, Power, and Colonial Culture in Mexico and the Andes

Constanza López Lamerain 462 Pulling out the Thread: Canon Law and Ecclesiastical Forums at the Core of Spanish American Judicial History

Jorge E. Traslosheros, Historia judicial eclesiástica de la Nueva España

Max Deardorff 463 Cuestionando el «sistema de castas» – Categorías de identidad en los Andes coloniales

Joanne Rappaport, The Disappearing Mestizo

Otto Danwerth 465 ›Die nackte Wahrheit‹ über Rebellionen in den Anden

Charles F. Walker, The Tupac Amaru Rebellion

Conrad Tyrichter 472 Kraft im Recht

Wolfram Siemann, Metternich

Alessandro Somma 473 Il diritto della Rivoluzione industriale

Matthias Maetschke, David von Mayenburg, Mathias Schmoeckel (Hg.), Das Recht der Industriellen Revolution

Kellen Funk 480 Die ungeschriebene Geschichte der nordamerikanischen Kodifizierung

John W. Cairns, Codification, Transplants and History

Kritik critique

Matthias Schwaibold 483 Codex Caroni

Pio Caroni, Privatrecht im 19. Jahrhundert

Urs Matthias Zachmann 487 Ungentle Civilizer: Treaties and Colonial War in 19th Century International Law

Harald Kleinschmidt, Diskriminierung durch Vertrag und Krieg

Gisela A. Ferrari 490 El constitucionalismo latinoamericano desde la óptica de una constitución olvidada

M.C. Mirow, Latin American Constitutions

Harriet Rudolph 492 Arenen des Rechts

Kjell Å. Modéer, Martin Sunnqvist (eds.), Legal Stagings

Michael Stolleis 493 Deutscher Juristenstand

Jean-Louis Halpérin, Histoire de l'état des juristes. Allemagne, XIXe–XXe siècles

Michael Stolleis 496 Verwaltungsrecht bei den Galliern

Grégoire Bigot, Ce droit qu'on dit administratif …

Jean-Philippe Dequen 498 Eternal Judiciary over Ever-changing Politics

Abhinav Chandrachud, An Independent, Colonial Judiciary

Karl-Heinz Lingens 500 Wenn zwei sich streiten …

Jan Martin Lemnitzer, Power, Law and the End of Privateering

Maartje Abbenhuis, An Age of Neutrals

Éric Schnakenbourg, Entre la guerre et la paix

Axel Gotthard, Der liebe vnd werthe Fried

Nina Keller-Kemmerer 502 Hybrides Völkerrecht: eine Diskursgeschichte aus der Perspektive der Peripherie

Arnulf Becker Lorca, Mestizo International Law

Kritik critique

Miloš Vec 505 The Project of Anti-Positivism in International Law

Mónica García-Salmones Rovira, The Project of Positivism in International Law

Hendrik Simon 508 Das Recht des Krieges

Isabell Hull, A Scrap of Paper

Martin Löhnig, Mareike Preisner, Thomas Schlemmer (Hg.), Krieg und Recht

Helge Dedek 510 Privat-Justiz

Imre S. Szalai, Outsourcing Justice

Lorena Ossio Bustillos 514 Feind des Kolonialismus

Bartolomé Clavero, Derecho global

Abstracts 516 abstracts

Autoren 524 contributors

Abbildungsnachweise 526 list of illustrations

Abstract

In the existing Islamic legal historiography on the 19th century, the focus has mostly been on the state-sponsored codification projects and the legal reformist attempts of Muslim modernists. In this article, I take a different approach by exploring the trajectory of one Islamic law-book (*Ghāyat al-ikhtiṣār*) written in the 12th century and its journey to the 19th century via multiple commentaries and super-commentaries across the terrains of the Shāfiʿīte school of Islamic law. I examine two "cultural translators" of this law book, who hailed from completely distant socio-cultural, political, and geographical contexts: Ibrāhīm al-Bājūrī (1784–1860), the rector of al-Azhar University Cairo from 1847 till his death, and Eduard Sachau (1845–1930), a professor at the University of Berlin starting in 1876. Juxtaposing al-Bājūrī with Sachau, as two cultural translators of one law, I investigate the nuances of mediators who stand between different *legal* times, traditions, languages, and meanings associate or disassociate with the realities of their particular socio-cultural contexts. Their experiments involving what is familiar and what is foreign explicate that the ambivalences in legal transfers cannot be reduced into any particular moments or intentions of the mediators, and the larger context is emphatically embedded within legalistic projects. Accordingly, the very concept of cultural translation should be reexamined in terms of law in order to accommodate various complexities.

Mahmood Kooria

Two ›Cultural Translators‹ of Islamic Law and German East Africa

The 19th century in global legal history is a time filled with vibrant shifts and unprecedented ruptures, and it is not different for Islamic law. In the existing legal historiography of Islam, however, the focus has always been on state-sponsored codification projects, on the one hand, and legal reformist attempts by Muslim modernists, on the other. In this article, I focus neither on any such political judicial processes nor on any Muslim ›reformists‹. Instead, I explore the trajectory of one Islamic law-book (*Ghāyat al-ikhtiṣār*) written in the 12th century and its discursivity in the 19th century via multiple commentaries and super-commentaries across the terrains of the Shāfiʿīte school. I focus on two arguable ›cultural translators‹ of this law book, who hailed from completely distant socio-cultural, political, and geographical contexts: Ibrāhīm al-Bājūrī (1784–1860), the rector of al-Azhar University Cairo from 1847 till his death, and Eduard Sachau (1845–1930), a professor at the University of Berlin starting in 1876 and the director of newly established Seminar of Oriental Languages in 1887. Despite the great distances between the lands of Germany and Egypt, as well as the cultures of Islam and Christianity, one law book brought them into close proximity. They also stand in the entangled geopolitics of their time and space, assuming we consider Egypt as being part of East Africa (instead of the more common assertion of it belonging to West Asia or the Middle East).

When many of his contemporaries were calling for a ›reform‹ of Islamic law, al-Bājūrī chose to ›translate‹ the very ›traditional‹ legal text *Ghāyat* by writing a super-commentary on it and explicated how ›reform‹ can be brought into the frameworks of tradition without calling for drastic change. Technically, he did not translate *Ghāyat*, for both the 12th-century original text and his super-commentary are in Arabic. Yet, through a different mode of textual reproduction, he ›translated‹ the old views of the base-text into the new contexts. A few decades later, Sachau chose to rely on al-Bājūrī's super-commentary when he decided to write an extensive corpus of Islamic law in the late 1890s. Sachau ›translated‹ this super-commentary into German, following a recent trend among his Orientalist contemporaries of translating traditional Islamic legal texts into European languages. His stated intention was making his deep knowledge of the East useful for German colonial entrepreneurship in East Africa. The outcome, *Muhammedanisches Recht nach schafiitischer Lehre*, is not a mere translation, but it is a comprehensive study of the Shāfiʿīte school of Islamic law. Such a study was unprecedented in German legal historiography.

Juxtaposing the contributions of al-Bājūrī with those of Sachau, as two 19th-century interlocutors of one old law book, I investigate the nuances of »translators« who stand between different *legal* times, traditions, languages, and meanings that associate or disassociate with the realities of their particular socio-cultural contexts. Their mediatory experiments between what is familiar and what is foreign explicate that the ambivalences in legal transfers cannot be reduced to any particular moments or intentions of the mediators, and the larger context is emphatically embedded within legalistic projects. Through these two paradoxical, yet complimentary cases of »cultural translation,« I problematize the appropriateness and applicability of the very concept in the realm of law. As the written texts, codes, or constitutions matter to the majority of global legal cultures, the disinclination of »cultural translation« towards textual cultures should be revisited from a legal-historiographic perspective. I also emphasize that translation is neither merely an act of mediation between two languages, cultures, or legal systems nor an innocent act of mutual exchange. Rather it is an act of multi-faceted appropriations, dominations, and colonization as much as acts of defensiveness and resistance.

al-Bājūrī and his *Ḥāshiyat*: The Textual *longue-durée*

The career and œuvre of Ibrāhīm al-Bājūrī provides us a window into the wider nuances of Islamic law in the 19th century. More than the uniqueness of his contributions, it is their resemblance to many other contemporary Muslim ju-

rists, and the many generations before them, that attracts our attention. The copious literature on the so-called Islamic ›reformists‹ and codifiers, who often questioned the very existence of Islamic legal tradition as practiced by the Sunni scholars, has neglected the ways in which larger Sunni intellectuals negotiated their religious and legalistic traditions. The historiography thus focused more so on such ›reformists‹ as Muḥammad bin ʿAbd al-Wahhāb (1703–1792), Muḥammad al-Shawkānī (1759–1839), Sir Sayyid Aḥmad Khān (1817–1898), Jamāl al-Dīn Afghānī (1838/9–1897), and Muḥammad ʿAbduh (1849–1905) at the cost of the larger scholarly community of such archetypal scholars as al-Bājūrī.[1] Very recently, Aaron Spevack explored the internal dynamics of such a normative scholarly model of Sunni Islam: what he calls the ›archetypal scholar,‹ specifically looking at the contributions of none other than al-Bājūrī.[2]

In his study, Spevack tells us that Sunni Islam does not fit into a simple categorization, and descriptions like ›traditionalism‹ or ›orthodoxy‹ versus ›rationalism‹ and ›reformism‹ are »overly narrow essentialist and reductive theories or description.«[3] He suggests the term »archetypal scholar« as a more accurate way of characterizing an intellectual tradition that functioned within a methodological framework combining law, theology, and mysticism. The characteristics of the framework were defined according to two points: one »representing total consensus« and the other »representing the furthest possible bounds of acceptable disagreement that remained within the realm of Sunni Islam.« Accordingly, al-Bājūrī's contributions fit into the longer textual and intellectual genealogy of Islam as well as into the contemporary discourses of the 19th century, for he simultaneously engaged with law, theology, and mysticism, along with the trivium-subjects like rhetoric and logic. Spevack writes: »He was an authoritative voice in nineteenth-century Sunni Islam, and continues to be to the present day. He did not merely regurgitate the ideas of those who came before him, rather he delved deeply into a multitude of subjects, offered his own views, and applied these ideas to his life.«[4] This view is very much in line with Sachau's own view of al-Bājūrī stated more than a century ago: »he corrects many a mistake, gives a sharper form to many a rule, and adds a lot of facts worth knowing, be it from his own or from other sources.«[5] In Spevack's study, however, the *Ḥāshiyat* that instigated Sachau's whole interest in him does not find a prominent place. In this article, I explore how this particular text presents and represents a longer textual tradition of Islamic law mediating between different terrains of time and place.

However, before we get too far along, a brief description of al-Bājūrī's profile and how he became a jurist would be useful.[6] He was born in 1784 in Bājūr (Manūfiyyat Province, Lower Egypt), a town with which he became renowned later. After completing his primary education with his father, at the age of 14 he enrolled at al-Azhar University. One year after his admission, the French invaded Egypt in 1798, and his study was interrupted for a few years. At that time, he left for Giza and returned to the university in 1801. There, he studied various disciplines and texts with many reputed scholars of the time, including ʿAbd Allāh al-Sharqāwī (d. 1812) and Ḥasan al-Quwaysnī (d. 1838), both of whom served as the rectors of al-Azhar in 1793–1812 and 1834–1838, respectively. Very early on in his life, al-Bājūrī had been writing commentaries and assisting his instructors with their lessons. Eventually, he was appointed a permanent lecturer at al-Azhar, and he became its rector (Shaykh al-Azhar) in 1847. He held this position until his death in June, 1860.

Certainly, *Ḥāshiyat* was not his only text. From 1812 onward he had authored a great number of glosses, commentaries, super-commentaries, and pamphlets on a range of earlier texts in disciplines varying from law, logic, rhetoric, ethics, mysticism,

1 For a recent survey, see Lauzière (2016) 6–16; Safdar (2013). For an analysis from a legal perspective, see Kerr (1966).
2 Spevack (2014).
3 Spevack (2014) 156.
4 Spevack (2014) 159.
5 Sachau (1897) xxii – translation, Spevack (2014) 190.
6 For a detailed description of his life and works, see: Ali Jumu'a, Introduction to Al-Bajuri (2006); Spevack (2014) 7–32.

theology to poetry, and he was truly a prolific writer. *Ḥāshiyat* is his penultimate work as well as the most renowned among his juridical writings.[7] Although his reputation as the rector of al-Azhar might have contributed to a wider reception of his works, it was not the only factor. Sachau says that their quality (regarding content) alone made them popular.[8] I would add to this that his wider network of students stretching from East Africa to Southeast Asia also played a significant role, as he is known to have spent many hours each day teaching and meeting students. Many of them eventually became very influential professors, writers, intellectuals, and administrators and who catalysed the popularity of his works.[9] In the Islamic educational realm, scholars usually preferred to teach the texts of their teachers for which they had a specific *ijāzat* (certificate) to teach and transmit.

Among al-Bājūrī's works, *Ḥāshiyat* stands out not only because it was one of his last works, thus giving him the chance to reflect upon his earlier works and demonstrated the robust state of his thoughts and arguments, but also due to its particular methodological and analytical approaches, as I shall explain below. *Ḥāshiyat* literally means super-commentary, and it focuses on Ibn al-Qāsim al-Ghazzī's commentary on *Ghāyat al-ikhtiṣār* of Qāḍī Abū Shujāʿ (d. 1197), which is also known as *Matn* or *Mukhtaṣar Abī Shujāʿ* as well as *al-Taqrīb*. Al-Bājūrī thus places himself within the longer textual tradition dating back to this 12th-century text via the commentary of al-Ghazzī of the 16th century. In turn, *Ghāyat* is said to belong to an even older textual genealogy: it is an abridgement of *al-Iqnāʾ* of al-Māwardī (d. 1058). *Al-Iqnāʾ* itself is said to be a summary of al-Māwardī's own *al-Ḥāwī al-kabīr*, which is a commentary on *Mukhtaṣar* of al-Muzanī (d. 878), which itself is a summary of *Kitāb al-Umm* of al-Shāfiʿī (d. 820), the eponymous founder of the Shāfiʿī school of law.[10] But, with regard to the connectivity of *al-Ghāyat* back to 9th-century *al-Umm*, we do not see a clear statement in those texts about their textual interconnectedness, unlike its forward connectivity with al-Bājūrī's super-commentary or al-Ghazzī's commentary. This explicit acknowledgement of a previous text since the late 12th century is mainly due to the growth of commentarial authority in Islamic legal history as a widely recognized form of juridical authenticity. *Ghāyat* thus stands as one of the seven prime texts that established independent textual families in the Shāfiʿīte school.

In a very brief introduction to *Ghāyat*, Abū Shujāʿ says that his colleagues asked him to write a concise text (*mukhtaṣar*) on Shāfiʿīte law that would simplify legal studies and ease memorization for beginners. This is a motivation mentioned by many Islamic authors, and it does not tell much about the authorial intention. But the factors behind *Ghāyat*'s success, compared to other Shāfiʿīte works, are not immediately obvious. One reason could be its particular time and place in which the leading Shāfiʿīte intellectual, al-Ghazālī (d. 1111), raised an internal attack against law at the end of the 11th century, and his dissatisfaction with the discipline generated a general distrust towards legal studies among scholars. Hence, Shāfiʿītes, as such, did not produce any remarkable works for almost a century. Out of the context of this intellectual vacuum came *Ghāyat* – a simplified text encapsulating the school's law into a simple framework and content, which both students and laypersons alike could make use of. Abū Shujāʿ himself was a professor of Shāfiʿīte law for more than four decades in Basra and was a qāḍī in Isfahan until he retired to Medina towards the end of his life. Apart from *Ghāyat*, we do not know if he wrote any other books in the field of law or in other disciplines.[11]

Ghāyat was widely used and studied, and the first known commentary came out in the late 13th century: *Tuḥfat al-ḥabīb* by Ibn Daqīq al-ʿĪd (d. 1302). For another century or so we do not find any other commentaries; however, in the 15th and 16th centuries more commentaries came out, two of which are particularly noteworthy: *Kifāyat*

7 For a chronological list of his books, see Spevack (2014) 22.

8 Sachau (1897).

9 Gran (1999).

10 About the interconnection between *al-Ḥāwi* and *Iqnāʾ*, Ibn al-Jawzī says: »al-Māwardī used to say: ›I commented on (*basaṭa*) the law in four thousand pages and I summarized it into forty.‹ In this comment (*mabsūṭ*), he meant *kitāb al-Ḥāwi*, and regarding the summary, he meant the *kitāb Iqnāʾ*.« Ibn al-Jawzī (1992), 8: 199.

11 For his biography, see al-Subkī (undated) 6: 15; Ibn Qāḍī Shuhbah (1978) 2: 29–30.

al-akhyār fī ḥall Ghāyat al-ikhtiṣār written by Taqī al-Dīn Abū Bakr bin Muḥammad al-Ḥusaynī al-Dimishqī (d. 1426) and *Fatḥ al-qarīb al-mujīb fī sharḥ alfāẓ al-Taqrīb* – also known as *al-Qawl al-mukhtār fī sharḥ Ghāyat al-ikhtiṣār* – written by Muḥammad bin Qāsim al-Ghazzī (1455–1512). Another well-known commentary by Khaṭīb al-Sharbīnī (d. 1570) entitled *al-Iqnāʿ fī ḥall alfāẓ Matn Abī Shujāʿ* also came out in this period, with many more to come.[12] The third commentary, *Fatḥ al-qarīb*, composed by Muḥammad al-Ghazzī went on to become *the* most renowned commentary among Shāfiʿīte jurists: it was taught across the Shāfiʿīte cosmopolis from the Eastern Mediterranean to the Eastern Indian Ocean and attracted more than ten super-commentators, including Aḥmad al-Qalyūbī (d. 1659), ʿAlī al-Shabrāmalsī (d. 1676), Ibrāhīm al-Birmāwī (d. 1894), Nawawī al-Jāwī (d. 1898), and most importantly Ibrāhīm al-Bājūrī – one of our central foci.

Muḥammad al-Ghazzī, as his name indicates, was born in Gaza (present-day Palestine); however, he migrated to Cairo in 1476, where he built up a very successful career as professor, jurist, and preacher. His *Fatḥ al-qarīb* attracted the attention of Shāfiʿītes because it was a commentary and very precise – two virtues most commentators in the Islamic legal tradition struggled with and failed to amalgamate the both. After the proliferation of commentarial literature in Shāfiʿīte circles, by the 13th century, most commentators came up with multi-volume works. Those texts, although useful for finding references and were well-received among the highly learned jurists, did not cater to the wider needs of teaching, memorization, and projection of authority at the primary and intermediate levels. On the other hand, *Fatḥ al-qarīb* was a very precise work (at around 300 pages), yet a commentary on one of the most widely circulated texts within the school. This made it a favorite text within Shāfiʿīte educational institutions at the introductory or secondary levels, often competing with another text in South and Southeast Asian and East African contexts: *Fatḥ al-muʿīn* of Zayn al-Dīn al-Malaybārī (d. 1583?). Yet, in Egypt and Syria, *Fatḥ al-qarīb* remained predominant throughout the centuries.

This receptivity of *Fatḥ al-qarīb* as a concise commentary of *Ghāyat* must have motivated al-Bājūrī to write a super-commentary on it and select it as the basis for his legalistic engagements according to the contextual requirements of his time and place. By the time of lettering it in the early 1840s, the Salafist arguments against the longer textual intermediation via glosses, commentaries, and super-commentaries had not gained currency in the larger legalistic realm, despite those already being in the air of theology and politics. Thus, al-Bājūrī, like many of his contemporaries and predecessors, believed that the best way to advance Islamic legal discourse was to start with its longer textual tradition, even if only to argue against it. In *Ḥāshiyat*, that is precisely what al-Bājūrī endeavored to do: to re-evaluate many previous rulings of Shāfiʿīte jurists on a number of issues and to offer new solutions he considered apt for the new contexts and times. Spevack gives one example worth quoting at length:

> One of many examples of al-Bājūrī's disagreement with the main text [*Ghāyat*] and its commentary [*Fatḥ al-qarīb*] regards the permissibility of eating meat slaughtered by a Jew or a Christian. Al-Ghazzī and Abu Shujāʿ seem to consider the animal slaughtered by any Jew or Christian to be permissible, whereas *muʿtamad* [the most reliable opinion in the school], which al-Bājūrī appears to favor, is that one can only eat from an animal slaughtered by a Jew or Christian who is from a community whose women are marriageable by Muslim men. It also implies the dominant Shāfiʿī doctrine that the only marriageable Jewish women are from communities that are descendants of the followers of Moses before Jesus's law abrogated Mosaic law, and that the only marriageable Christian women are those who descend from the followers of Jesus before his law was abrogated by Muḥammad. Although the opinion stated in the original text and its commentary by al-Ghazzī is the opinion of others (*baʿḍahum*), it is contrary to the *muʿtamad*, which al-Bājūrī favors in this instance.[13]

12 For a list of commentators and super-commentators, see the Introduction by Bassām ʿAbd al-Wahhāb Jābī to al-Ghazzī (2005) 10–15.

13 Spevack (2014) 83. His reference to *Matn Abī Shujāʿ*, 543 is certainly a mistake; the debate can be found in al-Bājūrī (1999) 2: 543.

Likewise, oftentimes al-Bājūrī disagrees with many previous jurists of the Shāfiʿīte school, including such varied figures as Yaḥyā bin Sharaf al-Nawawī (d. 1277), who heavily influenced the selection of canonical literature, and the two towering figures among the commentators like Ibn Ḥajar al-Haytamī (d. 1566) and Shams al-Dīn Muḥammad al-Ramlī (d. 1596). The super-commentary by al-Birmāwī on *Ghāyat* is a text that *Ḥāshiyat* often engages in conversation with many agreements and disagreements, for it was, at that time, the most recent text written on al-Ghazzī's commentary. But, it also engages with many more of the school's texts, especially the commentaries and super-commentaries of *the* most famous text of the Shāfiʿīte school: *Minhāj al-ṭālibīn* by Yaḥyā al-Nawawī. His deviation from the traditional views of the school, as we can see in the case above-cited involving meat slaughtered by Jews and Christians, is part of a larger juridical practice within the archetypal scholars of Sunni Islam. Most of those deviations involving disagreement, which prioritize personal views or weak opinions over the predominant rulings, were rooted in contemporary social, political, cultural, and economic contexts of each jurist – a phenomenon that I have identified elsewhere as a »politics and economy of prioritization«.[14]

In the preface, however, al-Bājūrī's stated objective is only to address the linguistic complexities of al-Ghazzī's commentary and al-Birmāwī's super-commentary on *Ghāyat*. He says that he only intends to simplify these texts in order to facilitate a smoother reading for beginners, and »many people have been pushing me again and again, again and again« to write a simple super-commentary and this is »my response to them.«[15] In practice, he goes beyond the linguistic analyses into rather complicated legal discourses, often bringing together multiple views within the school to prove his corrective arguments or points. Only in the introduction does he stick to language forms, lexicons, and semantics; afterwards, he only uses the linguistic issues as stepping stones to a wider debate in which layered opinions of the Shāfiʿītes from many centuries and across different geographies are amalgamated and hierarchized.

Another important contribution made by al-Bājūrī in this text is his attempt to bring together theological and mystical issues into legal discussions. Within the Shāfiʿīte textual tradition, theology and mysticism are not usually incorporated into law books, although the jurists did write separate works in those areas. The above-mentioned significant Shāfiʿīte jurists like al-Nawawī, al-Ghazzī, Ibn Ḥajar al-Haytamī, and al-Ramlī all have exclusive monographs in theology, mysticism, or ethics (and precisely that simultaneous engagement is what characterized a »Sunni archetypal scholar«), but their legal texts mostly stood independent of those areas. In *Ḥāshiyat*, we see an attempt to combine all three fields into a micro-site – a law book. For example, when we look at his detailed commentary on the word »Allah« as a name for an absolute essence with compulsory presence, we see how he brings in theological discussions. The same goes for many other phrases and names like the Prophet, Muḥammad, etc. This initial combination of three foundational disciplines of Sunni Islam within a single text makes *Ḥāshiyat* a »proto-archetypal text«.

Such approaches and contributions contained in *Ḥāshiyat* were well-received by the Shāfiʿītes, as the later history of the text tells us. It was taught, referred, circulated, and used throughout the Shāfiʿīte world. Its approaches were taken up and adapted by the jurists in different ways and forms. To illustrate the point, one of his students at al-Azhar University Muḥammad bin Ibrāhīm Abū Khuḍayr al-Dimyāṭī wrote *Nihāyat al-amal li man raghib fī ṣiḥḥat al-ʿaqīdat wa al-ʿamal*, in which he also clearly combined theology and mysticism into a legal text, making it a proper archetypal text.[16] Similarly, over the course of the 19th and 20th centuries, we see many Shāfiʿīte judges, law-givers, and authors constantly cite the text in their legal formulations. Although al-Bājūrī completed the text in 1842, it was first printed in 1856. It must have circulated in manuscript form until then, as the printing press had not yet been popularized in

14 Kooria (2016).
15 al-Bājūrī (1999) 1: 3.
16 al-Dimyāṭī (1895); MSS, Umm al-Qura University; cf. Kooria (2016) 238–239.

the Islamic world for printing religious and legal texts.[17] After the death of al-Bājūrī, however, multiple editions of the text were printed in 1868, 1881, 1886 (two editions), 1908, and 1924 by different publishing companies, and since then many more groups have been reprinting the old editions.[18] It still continues to be printed in several countries across the Shāfiʿīte world. All these components demonstrate the wider receptivity that the book received among the students and practitioners of Shāfiʿīte law.

Now the question is, how does al-Bājūrī's whole legalistic engagement in *Ḥāshiyat*, which connects his own context and concerns in the 19th century to those of the 16th and 12th centuries, contribute to our discussion concerning an arguable cultural translation of law? In other words, to what extent can his juridical accomplishments with the multilayered texts be interpreted as »translation,« if it is at all a suitable framework to analyze the broader trends among the archetypal scholars of the Islamic world? Before addressing these questions, let me juxtapose al-Bājūrī with an »actual« translator of Islamic law – namely, Eduard Sachau.

Sachau: East Africa and *Muhammedanisches Recht*

Ḥāshiyat caught the attention of European scholars after the text was selectively translated from Arabic into German by Eduard Sachau in the late 19th century. The European scholarly investigations into Islamic law (in particular) and the Islamic world (in general) had begun to intensify starting in the mid-19th century and involved a variety of political, scholarly, colonial, and administrative motivations and interests. Many Shāfiʿīte texts were thus translated into a substantial number of European languages and analyzed within these discourses, and *Ghāyat* and its commentary of al-Ghazzī also had immediately attracted the attention of Orientalists. Sachau's work was a continuation of his European predecessors, who worked on *Ghāyat* and al-Ghazzī's commentary.

Ghayat was translated into Dutch in 1859 by Solomon Keyzer under the title *Précis de jurisprudence musulmane selon le rite châfeite*.[19] Keyzer undertook this project as part of his larger engagement with Islamic law. He was one of the earliest Dutch academics to deal with Islamic law in order to teach it to aspiring colonial administrators heading to the Dutch East Indies. At the Colonial Institute in Delft, Keyzer succeeded the Arabist Albert Meursinge (1812–1850), who had dealt with the Malay law book of ʿAbd al-Raʾūf Sinkilī (d. 1693) *Mirʾāt al-ṭullāb fī tashīl maʿrifat al-aḥkām al-sharʿiyyat li Malik al-wahhāb*, which was composed at the request of Acehnese female ruler Tāj al-Salātin.[20] This work was a textbook in Delft.[21] As his successor, Keyzer attempted to revive Meursinge's scholarship by performing a close reading of the Islamic legal texts in order to better understand the Muslim legal cultures in the Dutch colonies. Thus, he came out with multiple works related to Islamic law, and most of those were direct translations, abridgements, or critical editions of Arabic, Javanese, or Malay texts. Before translating *Ghāyat*, he published in 1853 *Kitab Toehpah: Javaansch-Mohammedaansch wetboek*, arguably based on a Javanese-Islamic law book.[22] In the same year, he also published an introduction to Islamic law, which was the first of its kind in Dutch.[23] In 1857, he brought out a work on Islamic criminal law entitled *Het Mohamadaansche strafrecht naar Arabische, Javaansche, en Maleische rechtbronnen*. After the publication of *Ghāyat*'s translation, he also worked on the administrative and public laws of Islam and used al-Māwardī's renowned ›mirror for princes‹ as the basis for this work. He published this in 1862 as *Mawerdi's*

17 The first indigenous printing press in Egypt was established only in 1822 at Bulaq, and it was mostly used for government purposes, like publishing on military and naval topics. Out of 243 titles published by the Bulaq Press, the majority of books were on military and naval subjects (48 titles), followed by poetry (26), grammar (21), mathematics and mechanics (16), medicine (15), and veterinary medicine (12). Lunde (1981) 33.

18 Bassam ʿAbd al-Wahhāb al-Jābī, Introduction to al-Ghazzī (2005) 11–12.

19 Keyzer (1859).

20 Muersinge (1844).

21 Buskens and Dupret (2014) 33–34.

22 Keyzer (1853a).

23 Keyzer (1853b).

publiek en administrative regt van den Islam. Against this background of scholarly pursuits, his selection and translation of *Ghāyat* makes perfect sense. Throughout his career, he sought to find a ›pure Islam‹ explained in the Middle-Eastern legal texts he dealt with. With a basic understanding of the fact that the Muslims in the archipelago follow Shāfiʿīsm, he took up the prominent texts of that school, translated them either from Arabic, Malay, or Javanese into Dutch, and published and/or taught them to his students. *Ghāyat* was clearly the most important Shāfiʿite text that he had translated – most of his other works dealt only with particular aspects of Islamic law.

More than two decades later, another Dutch scholar L. W. C. van den Berg continued Keyzer's quest to uncover Islamic legal aspects of the colonies, and he stressed that the focus should be on the texts used by Muslims. He argued that *Ghāyat* was less influential in the Dutch East Indies and suggested that *Minhāj al-ṭālibīn* of Yaḥyā al-Nawawī is actually the most famous text among Shāfiʿites. He translated that text into French in the 1880s as *Minhâdj at-talibîn; Le guide des zélés croyants*: *Manuel de jurisprudence Musulmane selon le rite de Chafi'i.* This was during his career in the East Indies as »Official for the practice of ›Indische‹ languages and Advisor for ›Oostersche‹ (›Eastern‹) languages and Muslim law,« a position that he had held from 1878 till 1887.[24] Then, he came back to the Netherlands and was appointed professor at the University of Delft, where he continued to contribute to the scholarship on Islamic law by writing a number of books, articles, and reviews and earning many friends and foes (especially Christiaan Snouck Hurgronje, who frequently criticized him).[25] During this tenure, he ventured to translate al-Ghazzī's commentary on *Ghāyat* into French in 1894.[26] In the preface to this book, he did not hesitate to spell out the outright colonial motivation behind his interest in Islamic law and the translation of al-Ghazzī's commentary. He wrote:

> From year to year European control over Moslem peoples is extending, so that it is unnecessary to insist upon the importance of rendering the two works that form the basis of the legal literature of the Shāfiʿite school accessible, not only to a small number of Arabic scholars, but also to magistrates and political agents to whom that language continue for the most part unfamiliar.[27]

Fatḥ al-qarīb of al-Ghazzī thus catered to the colonial scholarly pursuit, while the other work he mentions is *Minhāj al-ṭālibīn*, which was a text that he had already translated. After all, his translations of the texts were funded by the colonial government, as he himself writes: »In the Netherlands there is a special interest as the great majority of Muslims among its subjects follow the Shāfiʿī school. That is why Government has decided to appoint me« to undertake this project.[28] Both of these translations are in need of extensive study, not only in terms of their authorial intention and colonial motivation, but also their content, methods, and approaches. For the moment, suffice it to say that he also has utilized al-Bājūrī's super-commentary on many occasions while translating *Fatḥ al-qarīb* either to cross-check the variations in the original Arabic or to provide annotations. As in *Minhāj*, here, too, he provides the original Arabic on the facing pages with indications as to the differences in several manuscripts. Unlike the original, the translation is divided into sections and articles intended to facilitate comprehension of the text.

This entanglement of colonial expansion and translation of Islamic legal texts is what is reflected in German East-African history, and that is what makes Eduard Sachau and his law book part of a longer and broader project within Islamic legal history. Similar to their British and Dutch »colleagues« falling somewhere along the colonial spectrum, German colonizers in East Africa also considered mastery of the Islamic legal texts to be the best way to handle the juridical problems concerning their large number Sunni Shāfiʿite subjects. Once the protectorates of the German East African Company expanded from Tanganyika to Bagamoyo, Dar es-Salam, Kilwa, etc. and their further advancements met with serious resistance in the 1880s and 1890s, such as the Abushiri Revolt in 1888–1889 by the Arab and Swahili subjects and

24 Van Hensbroek (1875) 6; Van der Veur (2007) 127.
25 Van den Berg (1928) 12–20.
26 Van den Berg (1894).
27 Van den Berg (1894) viii; with minor changes, this translation is taken from Howard (1914) v.
28 Van den Berg (1894) viii.

the Hehe tribal insurrection under the leadership of Chief Mkwawa between 1891 and 1898, the administrators sought different ways to subjugate its population. Along with many other resolutions, some officers realized the importance of law and endeavored to codify the »indigenous« legal practices by translating and annotating related texts. That is how Sachau indirectly ends up translating the *Ḥāshiyat* of al-Bājūrī as *Muhammedanisches Recht nach schafiitischer Lehre* in 1897. In the book's preface, he states the relevance of the text in smoothening the German administration's tasks in East African Muslim areas.[29]

He had already published works in German on Islamic law and, given his numerous publications and translations, including Muḥammad bin Aḥmad Bīrūnī's magnum opus on al-Hind, had been acclaimed as one of the first authorities in German academia on Islam and Islamic history. After concluding his studies in Kiel, Leipzig, and Halle, as well as obtaining his doctoral degree at Halle in 1867, he was appointed professor at the universities of Vienna and Berlin, respectively. He had a profound mastery of many Semitic languages, including Arabic, Persian, Syriac, and Aramaic; and this played no small part in his appointment as director in 1887 of the newly created Seminar of Oriental Languages at the University of Berlin. Nearly 30 years before *Muhammedanisches Recht* came out, he had published a study on the early history of Islamic law, in which he presented a general picture of the foundations and formative differences of legal schools.[30] Though his source-analyses and many arguments were analogous to the traditional Muslim narratives, this study was, nonetheless, something innovative in German academia, which was just starting to engage with the Islamic legal historiography. He had also worked on the Ibāḍī version of Islamic law, focusing on inheritance law after having conducted field-research in East Africa in order to understand the binding legal systems there.[31] In the empirical research among the fuqahā of Zanzibar, he utilized questionnaires (to which only one Ibāḍī scholar responded) and interviews (in which many Shāfiʿīte jurists responded).[32] Furthermore, he also worked extensively on a number of other such legal traditions as those of the Syrian Nestorian Christians, Sassanids, etc.[33]

Against the backdrop of his own engagements with Islamic law, Sachau undertook the project of translating the *Ḥāshiyat* and did so in a way that perfectly fit two trends of his time: the general trend in Western Europe of translating Islamic legal texts as a means to facilitate colonial administrations, and the particular trend initiated by Keyzer of translating the works from *Ghāyat* textual family of the Shāfiʿī school. With regard to the former, the preface of *Muhammedanisches Recht* opens by articulating both how the colonial expansions have brought so many Muslim lands under the aegis of Christian empires and rulers – as can be seen in British India, Dutch Indies, Algeria, and Russia, not to mention in German East Africa – and just how important law has become when it comes to controlling the new subjects. He also enlists the earlier attempts by the Europeans to deal with Islamic law, such as those of Warren Hastings, Charles Hamilton, and William Jones in 18th-century British India to translate Islamic legal texts or to formulate new legal codes that merge colonial projects with Islamic legal traditions.[34] Through these descriptions, he asserts his own position in that longer chain of scholarship that facilitated the *taming* of the Muslim subjects. In addition, he also tells us his own trajectory in dealing with Islamic law over the course of the three decades spanning his first article on this subject and the present work. He says that while back then Germany hardly possessed any Muslim lands, the current situation has changed entirely and a better grasp of Islamic law now has a broader appeal.[35]

With regard to the second trend, the wider receptivity of *Ḥāshiyat* in the Shāfiʿīte world mentioned above must have served as an initial introduction for him. Concerning the work and its receptivity among the Shāfiʿītes, he writes: »It is among the great and latest commentaries of Shāfiʿīte Islam. It enjoys the largest authority not

29 Sachau (1897).
30 Sachau (1878) 699–723.
31 Sachau (1894).
32 Sachau (1898) 1–8.
33 For a list of his works until 1914, see Weil (1915) 1–14.
34 Sachau (1897) vii–ix.
35 Sachau (1897) xvi.

only in the University in Cairo and in Egypt, but also in other parts such as in East Africa.«[36] He also firmly believed in its internal strength as an outstanding text of Shāfiʿīte law, especially when compared to the overly precise texts such as the *Minhāj* or the complicated commentaries. As quoted above, he writes about al-Bājūrī's legal approach: »he corrects many a mistake, gives a sharper form to many a rule, and adds a lot of facts worth knowing, be it from his own or from other sources.«

In *Muhammedanisches Recht*, Sachau does not translate *Ḥāshiyat* word for word. Rather he utilizes it to produce a codified form of Islamic law. Whereas al-Bājūrī followed a traditional method of writing a super-commentary (i. e. by breaking up each sentence or phrase into its components to analyze the linguistic, theological, scriptural, or/and historical values embedded in the legalistic articulations), Sachau pays more attention to the content and rulings. To this end, he subdivides each chapter into numbered »articles« that ›communicate‹ with the reader in the form and language of European codes, yet without altering the original content. Many foreign terms and phrases are annotated in the endnotes of each chapter. More interestingly, he skips over or summarizes many parts of the *Ḥāshiyat* related to criminal laws or public laws, for he considered them too cruel or too controversial for the likes of the German administration.[37] However, *Ḥāshiyat* was not his only reference. He also makes use of other known commentaries and super-commentaries within and beyond the *Ghāyat* textual family: primarily using the commentary written by al-Khaṭīb and the super-commentary by al-Birmāwī. When it came to additions and deletions, in many ways he followed the approach used by Van den Berg when translating *Minhāj* in the 1880s. A comparative analysis of both translations and the possible affiliations between both translators might reveal more interesting aspects.

Once the book came out, the Dutch scholar C. Snouck Hurgronje criticized Sachau's selection of the *Ḥāshiyat*, and suggested that he should have instead translated al-Sharwānī's *ḥāshiyat* on *Tuḥfat* of Ibn Ḥajar al-Haytamī, which was the well-known and most relied upon text among the Shāfiʿītes of the time.[38] I believe that Hurgronje's suggestion stems from an improper generalization he tended to make connected with his educational experiences in Mecca. Given that al-Sharwānī was a teacher of Shāfiʿīte law in the city for quite a long time, it comes as no surprise that he was certainly well-known in Mecca and in the regions closely associated with it. In contrast, al-Bājūrī's career was centered in Cairo – which is geographically closer to the East African educational landscapes than to Mecca. Thus, al-Bājūrī's *Ḥāshiyat* must have been more widely circulated among the Swahili Shāfiʿītes (as Sachau himself attests in the preface of the book) than al-Sharwānī's work on *Tuḥfat*. Hurgronje seems to have overlooked this regional difference, for he makes this blanket generalization based on his knowledge of Shāfiʿīte texts used in Mecca and in the Malay world.

Apart from Hurgronje's criticisms, the work was well-received in the German and English clusters of Islamic law. It was used by the German lawyers and administrators in the region when they were involved in legal issues pertaining to Muslims/Islam. The English in East Africa also must have made use of the work, as one reviewer anticipated: »It will even prove very useful to English jurisconsults in Eastern Africa, because the Shafiite rite is there the ruling one.«[39] The same reviewer also thought that the book offered grand arguments to those who campaign for the establishment of an Oriental School in London (which eventually materialized as the School of Oriental and African Studies). Indeed, many Islamic legal texts were used by the German and English judges in East African courts for several years, but specific usage of this text still needs to be explored.[40]

Since I have already presented the legalistic entanglements of both al-Bājūrī and Sachau, now

36 Sachau (1897) xxv.

37 Among the Islamist scholars of the time, there was a general consensus that the Islamic criminal law was too cruel and inapplicable. In his translation of *Minhāj*, Van den Berg also mentions this in the opening pages.

38 Hurgronje (1898).

39 Hirschfeld (1898) 433.

40 Stockreiter (2010) 569–570; Stockreiter (2015) 30, 56, 100.

let us return to the question I raised about the appropriateness of identifying al-Bājūrī's contributions as ›cultural translations of law‹. Indeed, if the same question can also be raised about Sachau's work, then a juxtaposition of their contributions would be rather revealing of this concept as a meaningful framework for analysing the legal interactions between various regions, periods, cultures, and societies.

Scholarly Communitas Along the Thresholds

In the existing theories of cultural translation, the primary concern involves the circulation of people as well as consequent cultural encounters and exchanges more so than the movement of objects like texts. Taken in this sense, al-Bājūrī and Sachau's texts do not seem appealing to such articulations based on the mobility of people. But their works do matter very much in the cultural translation, for those did, indeed, intermediate between distant times, spaces, cultures, and systems of law. If the traditional framework of translation studies focuses on the processes taking place between a ›start text‹ and a ›fixed target text,‹ then cultural translation conceptualizes the intermediating ›translator‹ as someone who negotiates between two or more different cultures formulating a cultural hybridity that mediates with or against the problematic cultural borders. Such borders generated semiotic entities as an in-between zone of ambivalence and ambiguity, which are often identified as thresholds. Victor Turner theorized the status of thresholds (*limen* or margin), which remain crucial in a meaningful translation between cultures.[41] Engaging with the Belgian folklorist Arnold van Gennep and analyzing the *rites de passage*, he substantiated the liminality as a stage of transformation in which a new sense of *communitas* comes into being.[42] Communitas emerges from a non-social structural context in the three phases of rites of passage: separation, margin, and aggregation. While the first and last phases are self-explanatory, the margin is the core of liminality in which a person finds a new »community« (a term with which Turner disagrees) after departing from his/her fixed points in a social structure, yet prior to re-aggregating. Such a formulation of communitas is a »social anti-structure« in opposition to the »social structure« that has its own fixed rules, statuses, regulations. Communitas is thus »a relationship between concrete, historical, idiosyncratic individuals« who share an undifferentiated, unmediated sense of community. Accordingly, al-Bājūrī and Sachau's contributions can be understood against the liminality of an *idealogical communitas* of archetypal scholars or Orientalists, for their specific belonging to such a communitas has developed »a structure in which free relationships between individuals had [*sic*] converted into norm-governed relationships between social personae« and both the archetypal scholars and Orientalists have been scholarly collectives that arose in a historical spontaneity with or against the normative scholarly practices interconnecting distant times and places.

The cultural theorist Homi Bhabha problematizes the cultural translation process in his close reading of literary texts against the backgrounds of post-colonial historical structures and migrations. He argues that the ›newness‹ that a diasporic or minority community comes across owes to *medias res*: »a newness that is not part of the ›progressivist‹ division between past and present, or archaic and the modern; nor is it a ›newness‹ that can be contained in the mimesis of ›original and copy‹«.[43] The borderline between adapting the newness or resisting it is thus formulates the state of cultural hybridity and the process of cultural translation. In his own words, »cultural translation desacralizes the transparent assumptions of cultural supremacy, and in that very act demands a contextual specificity, a historical differentiation *within*« minority or diasporic positions.[44] His conceptualizations owe to Walter Benjamin's notion of ›untranslatability‹ and Derrida's commentary on it, but those are irrelevant for the present analysis.[45] Moreover, most of his theories (in particular) and the cultural-translational theory (in general) have been used to address the post-colonial situations of previous colonies and metropoles as well as the mobility of

41 Turner has explained this concept in his various writings. The citations in this article are mainly from Turner (1969) 91–165; Turner (1974) 47; 231.

42 Van Gennep (1960).

43 Bhabha (1994) 227.

44 Bhabha (1994) 228

45 Benjamin (1968); Derrida (1985).

people between different places and cultures. For these reasons, those frameworks have largely been addressed to and utilized by the social scientific disciplines and, to a lesser extent, by the humanities. Although the historical developments of the 19th century set the background for such exercises, the historians as such have been largely reluctant to adapt them. These precautions should be kept in mind when reflecting on al-Bājūrī's *Ḥāshiyat* and Sachau's *Muhammedanisches Recht* through the prisms of cultural translation of law.

Despite his adherence to a long existing juridical genealogy and presence in an archaic space of legal transmissions, he adjoins to the cultural-translation framework, for he constructed a ›newness‹ through his translation of the centuries-old textual longue-durée into the contexts of the 19th century. In doing so, he resisted another kind of newness that was taking shape around him: the codification and so-called reformation of Islamic law. If the modernist ideas that would come to dominate the Egyptian intellectual scenario as well as the wider Muslim world in the following decades were cast as ›progressive‹ ways to reform and reformulate Islamic law, al-Bājūrī and his *Ḥāshiyat* firmly believed in the potential of earlier texts and sought ways to advance their normativity by making it appealing to his time and place. His legalistic rationale might not have catered to the ›progressive‹ mental scape of the later majoritarian intellectuals, but it certainly did satisfy the communitas of archetypal scholars, who continued to resist the ›reformist‹ impulses against the rich legal tradition. Such newness in his critical engagement with the standing tradition within the frameworks of a longer textual and scholarly genealogy thus catalyzed the receptivity of his thoughts across the legal cosmopolis of Shāfiʿīsm from the Mediterranean to the Indian Ocean. Sachau's translation itself is a very telling exemplification in its reachability.

Sachau's work, however, comes across very differently if we read it through the prism of cultural translations of law. Although he did translate *Ḥāshiyat* – thus it can be analyzed as such – his intermediation between two dissimilar legal cultures is what is more relevant to the matter at hand. His primary motivation was to make the text useful for the increasing colonial expansion, and his translation stood as the most appropriate object towards that end. In contrast to the earlier European scholarship that mostly ignored the Islamic texts or used them only to engage in polemical discourses, the scholarship in the 19th century created or found themselves in an in-between zone of powerful scholarly-political ambivalence. Their liminality nurtured a communitas, which was eventually referred to as Orientalists. They were caught or entangled between their contemporary scholars, who pursued knowledge for the sake of knowledge, and colonial officers, who pursued knowledge for a better administration of colonized lands and people. *Muhammedanisches Recht* is thus a product of its liminality as a tool of administration, yet also a work of scholarship unprecedented in the German academia.

Through these frameworks, if both the texts *Ḥāshiyat* and *Muhammedanisches Recht* and their respective authors, al-Bājūrī and Sachau, can be analyzed as an explication of cultural-translation in terms of law, an immediate problem arises: that of textuality. According to the cultural translation theory, there should not be ›start texts‹ and ›target texts‹. But in our case, there are: both *Ghāyat* and its commentary to *Ḥāshiyat* as well as *Ḥāshiyat* for *Muhammedanisches Recht*. In most analyses of legal history, especially once we look into the theoretical and jurisprudential transmissions, the case would not be much different. If this situation does not impede the analytical possibility of cultural translation in legal historiography, we have to bring back texts and textuality into cultural translational theory. Or, we have to *populate the texts*: the texts are people, whether or not the authors are still alive. Unless and until the legal historiographical research solves this predicament, the cultural translation of law would bestow a conceptual oxymoron.

Conclusion

Through the two paradoxical, yet complimentary cases of »cultural translation« explicit in al-Bājūrī's *Ḥāshiyat* and Sachau's *Muhammedanisches Recht*, translation is not merely an act of mediation between two different legal systems, and it is not an innocent act of mutual exchange. Rather it is an act of resistance, reformulation, appropriation, domination, and colonization. By writing a super-commentary and bringing new perspectives to the old texts, al-Bājūrī asserted new meanings to an otherwise dead text. This act of bestowing new meanings was an ›archetypal scholarly‹ way of negotiating with the notions of reform standing within the

frameworks of a long normative textual order. Bringing new meanings and perspectives to a 12th-century legal text and its 16th-century commentary, al-Bājūrī and his *Ḥāshiyat* resisted unacceptable forms of deviations (*bidʿat*) from Islamic law. This translation of a normative legal culture into the new space and time appealed to a wider communitas of archetypal scholars who also wanted to defend their commentarial authority against the ›reformist‹ calls for a complete elimination of such a textual longue durée. If al-Bājūrī's translation was simultaneously a defensive and constructive act, Sachau's translation was a tool for economic exploitation, political subjugation, and cultural appropriation. Both their cases thus tell us that the translation is not an innocent act of cultural mediation and production, rather it is very much ideological, political, and often oppressive and destructive. They also demonstrate that the texts stand at their legalistic projects of cultural translation.

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